

REMARKS

Please reconsider the application in view of the above amendments and the following remarks. Applicant thanks the Examiner for carefully considering this application and indicating that claims 3, 6-8, 13, 14, and 18-20 contain allowable subject matter.

Disposition of Claims

Claims 1-20 are pending in this application. Claims 1, 9, and 16 are independent. The remaining claims depend, directly or indirectly, from claims 1, 9, and 16.

Amendments to Claims

Claim 2 has been amended in the present reply. The amendment to claim 2 has been made only to correct a typographical error by removing "disposed at the." This amendment does not constitute new matter, and has not been made in view of any prior art cited by the Examiner or otherwise known by the Applicant.

Rejections under 35 U.S.C § 102

Claims 1, 2, 4, 5, 9-12, and 15-17 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,076,620 ("Opferkuch"). This rejection is respectfully traversed.

Independent claims 1, 9, and 16 each recite a well in a non-central location within a cup or insert. Claims 1 and 9 further recite that a surface is disposed "within the container" (Claim 1) or on an insert (claim 9) that is adapted to direct particles towards the non-centrally located well.

The Examiner referred to Figure 2 of Opferkuch as support for rejecting claims 1,

9, and 16 as being anticipated. Specifically, item 14 is referred to as a well by the Examiner. Applicant respectfully disagrees with this interpretation of Figure 2. Item 14 is referred to as a "discharge port" by Opferkuch. See column 6, lines 19-41. Applicant believes that the discharge port 14 differs from the non-centrally located well claimed in the present application in more than just terminology. Specifically, the discharge port 14 is shown as a pipe with an inlet disposed at the *center* of a conical surface at the bottom of a container (cylindrical vessel 11). Further, the pipe that constitutes the discharge port 14 traverses the wall of the container. The function of the discharge port 14, as disclosed by Opferkuch, is to *discharge* solids, not to *collect* the solids, which the non-centrally located well recited in claims 1, 9, and 16 accomplishes.

Further, with respect to claim 16, which recites a method for evaluating the settling characteristics of a fluid containing solid particles, Opferkuch neither shows nor suggests any form of a testing method for evaluating settling characteristics. Claim 16 recites that a first sample of the fluid is extracted from a well in *non-centrally* located position within a cup. The discharge port shown in Figure 2 of Opferkuch discharges fluid from a *central* position in the container. Further, Opferkuch does not disclose that the sludge drawn from the container by the discharge port is intended to test settling characteristics of the fluid. The apparatus and method disclosed by Opferkuch are only described in the context of purifying sewage. Opferkuch neither shows nor suggests that the apparatus and method may be suitable for testing settling characteristics of the fluid. Thus, Opferkuch cannot be said to anticipate the testing method recited in claim 16.

In view of the above, Opferkuch fails to show or suggest the present invention as recited in claims 1, 9, and 16. Thus, claims 1, 9, and 16 are patentable over Opferkuch.

Dependent claims are allowable for at least the same reasons. Accordingly, withdrawal of this rejection is respectfully requested.

Allowable Subject Matter

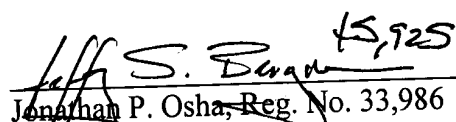
Applicant thanks the Examiner for indicating that claims 3, 6-8, 13, 14, and 18-20 contain allowable subject matter. At this time, Applicant respectfully declines amending the allowable claims due to the Applicant's belief that claims 1, 9, and 16, from which these claims depend are allowable in their present form.

Conclusion

Applicant believes this reply is fully responsive to all outstanding issues and places this application in condition for allowance. If this belief is incorrect, or other issues arise, the Examiner is encouraged to contact the undersigned or his associates at the telephone number listed below. Please apply any charges not covered, or any credits, to Deposit Account 50-0591 (Reference Number 05542/053001).

Respectfully submitted,

Date: 1/4/05


Jonathan P. Osha, Reg. No. 33,986
OSHA & MAY L.L.P.
One Houston Center, Suite 2800
1221 McKinney Street
Houston, TX 77010
Telephone: (713) 228-8600
Facsimile: (713) 228-8778